

Special order printed material that would not be considered stock or standard items and would not be sold to someone other than the purchaser for substantially the same price would not be subject to the Retailers' Occupation Tax when sold, but would be subject to the Service Occupation Tax. See 86 Ill. Adm. Code 130.2000. (This is a PLR).

April 19, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of February 16, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

This request for a Private Letter Ruling is made on behalf of our client, AAA. Enclosed is a Power of Attorney authorizing BBB to represent AAA in this matter. We request a ruling that the ticket stock described below is custom printed material for the purposes of the application of the Use Tax and the Service Occupation Tax/Service Use Tax ("SUT"). Neither an audit nor litigation is pending with the Illinois Department of Revenue ("Department") involving AAA or the issues presented below. To the best of our knowledge and that of AAA, (1) the Department has not previously ruled on the same or similar issues presented below for AAA or a predecessor; and (2) neither AAA nor any representative of AAA has previously submitted the same or similar issues to those presented below to the Department but withdrew them before a letter ruling was issued.

STATEMENT OF FACTS

When a customer makes an airline travel purchase from a member agency, the agency will print the traveller's name and flight information on an NAME and issue it to the customer.

AAA special orders NAMEs from an out-of-state printer. Each NAME is designed and printed in accordance with general airline industry specifications provided to AAA and many AAA-specific requirements. AAA provides the printer with a very detailed document, approximately 25 pages in length, spelling out the specifications and

requirements for the printing of NAME's. Some of the general specifications include, but are not limited to: 1) paper fiber, thickness and stiffness; 2) internal tearing resistance; 3) paper opacity, porosity, and compatibility; and 4) dimensions, and numerous other measures of quality and construction. Some of the NAME's printed contain a magnetic stripe that is used to encode information pertaining to the issuance of a ticket. These NAME's are designed and manufactured to be machine-read and thus the specifications require the NAME's to be connected together and specially folded to facilitate quick scanning and dispensing.

All of AAA's NAMEs include additional features, beyond the industry uniform specifications. Printed on the face of all AAA NAMEs includes the following unique features/information:

- 1) Sequential stock control numbers assigned to AAA that are used to track all NAMEs issued by AAA members;
- 2) AAA's issuer identification number, which is unique to that of each airline or other non-AAA issuer that sells tickets directly to customers and further evidences that the flight was purchased through an AAA member;
- 3) AAA's name and registered logo, which is recognized by the airlines as the only valid common ticket (NAME) stock in the United States;
- 4) AAA's copyrighted uniquely designed green and yellow background security patterns designed to prevent the fraudulent and invalid issuance of AAA NAME's;
- 5) AAA's stock/inventory number and production date reference number, which is used to identify stale NAME's which AAA members are instructed to destroy or return to AAA after a certain period of time; and
- 6) Information field names and color shading, the layout and color of which, although in compliance with industry uniform standards, is unique to AAA's NAMEs and clearly distinct from individual airline's own, i.e., non-common, ticket stock such that if another airline tried to print its information on an AAA ticket, much of the information printed on the NAME would not be in line with or necessarily correspond with the field descriptions pre-printed on the NAME.

RULING REQUESTED

AAA's purchases of NAMEs are purchases of custom printed material for Use Tax and Service Occupation Tax/Service Use Tax purposes.

RELEVANT AUTHORITY

Illinois Regulation, 86 Ill. Adm. Code 130.2000 **Person's Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers**

Section (b)(1)***Persons engaged in the graphic arts or related occupations may, under certain circumstances, be considered to be engaged in the business of selling tangible personal property to purchasers for use or consumption, in which event they incur Retailers' Occupation Tax liability. This is the case, for example, when they sell to purchasers for use or consumption tangible personal property which is standard enough to be stocked for sale or offered for sale from catalogues or other sales literature, or which otherwise is sold at retail apart from the seller's engaging in a service occupation. Illustrations would include legal forms, pictures or other items which are stocked for sale or offered for sale to the public generally, or products of photoprocessing.

Section (h)(2)- **Special Order Sales-** A person who holds himself out as being engaged (or who habitually engages) in selling tangible personal property at retail shall be deemed to be a retailer hereunder with respect to such sales (and not primarily in a service occupation) notwithstanding the fact that such person designs and produces such tangible personal property on special order for the purchaser and in such a way as to render the property of value only to such purchaser, if such tangible personal property so produced on special order serves substantially the same function as stock or standard items of tangible personal property that are sold at retail.

Illinois Regulation, 86 Ill. Adm. Code 130.1995 **Personalizing Tangible Personal Property**

(a) When the Tax Applies

(1) Thermometers, pencils, pens, mirrors, silverware, notebooks, diaries, baby books, guest registers and other similar books of general utility for the recording of information, brief cases, wallets, toys, paper weights, pins and other jewelry, watches, rulers, match books, playing cards, blotters, calendars, bags and other fairly standard salable containers, napkins, dishes (whether made from paper or some other material), handkerchiefs and other articles of merchandise which bear the name, monogram or trade-mark of the purchaser or of some other person, or which bear advertising inscriptions of the purchaser or of some other person, have intrinsic usefulness and general utility and so have commercial value (i.e., value to persons other than the purchaser), notwithstanding the fact that such items are personalized for the purchaser by the seller by printing, engraving or some other process by means of which the purchaser's name, monogram, trade-mark or special advertising matter is placed upon the article for the purchaser by the seller.

(2) Retail vendors of such items incur Retailer's Occupation Tax liability. This is also true even if the seller produces such items only upon receipt of an order therefor. The value or size of the article sold is not material.

(3) For Information concerning what constitutes a "sale at retail" see Subpart B of this Part. For information concerning the taxability or exemption of receipts from personalizing charges where the seller incurs Retailers' Occupation Tax liability despite his furnishing of a personalizing service as an incident to the sale, see 130.450 of this Part.

(b) When the Tax Does Not Apply

(1) Sellers of personalized business calling cards, greeting cards, letterheads, envelopes, labels, name plates, badges, medallions and the like do not incur Retailers' Occupation Tax liability on their receipts from such sales because they are primarily engaged in a service occupation in producing or procuring such items, which have no commercial value for their customers.

(2) Persons who personalize tangible personal property which already belongs to their customers also are engaged primarily in a service occupation and do not incur

Retailers' Occupation Tax liability upon their receipts from engaging in such services occupation.

(3) For information concerning the application of the Service Occupation Tax to the purchase and retransfer of tangible personal property by servicemen as an incident to sales of service, see the Service Occupation Tax Regulations.

General Information Letter, ST-99-0345-GIL (Nov. 09, 1999):

"For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.2000, which is the regulation for "Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers." As a general rule, when products are items of general utility and serve substantially the same function as stock or standard items, the products will be subject to the Retailers' Occupation Tax when sold. Items which serve substantially the same function are those which, when produced on special order, could be sold as produced to someone other than the original purchaser at substantially the same price.

Items that would not be considered stock or standard items and would not be sold to someone other than the purchaser for substantially the same price would not be subject to the Retailers' Occupation Tax when sold, but would be subject to the Service Occupation Tax. Special order or custom print items are generally not considered stock or standard items and are generally not sold to someone other than the purchaser for substantially the same price. Therefore special order or custom print items are generally subject to the Service Occupation Tax. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101."

DISCUSSION

AAA's purchases of NAME's are purchases of custom printed material for Use Tax and Service Occupation Tax/Services Use Tax purposes.

General Information Letter ST 99-0345 states that "[s]pecial order or custom print items are generally not considered stock or standard items and are generally not sold to someone other than the purchaser for substantially the same price. Therefore, special order or custom print items are generally subject to the Service Occupation Tax." See, ST 00-0017-GIL. The Illinois statutes, regulations and rulings do not define the term "custom print items." However, ST 99-0345-GIL further explains that "custom print items are generally not considered stock or standard items and are generally not sold to someone other than the purchaser for substantially the same price."

The Illinois Regulations provide guidance as to what is considered "stock or standard items" and the tax consequences of selling such items. According to Illinois Regulation 86 Ill. Adm. Code 130.2000(b)(1), "[p]ersons engaged in the graphic arts or related occupations ... incur Retailers Occupation Tax ['ROT'] liability ... when they sell to purchasers for use or consumption tangible personal property which is *standard enough to be stocked* for sale or offered for sale from catalogues or other sales literature, or which otherwise is sold at retail apart from the seller's engaging in a service occupation. Illustrations would include legal forms, pictures or other items which are *stocked for sale* or offered for sale to the public generally." (emphasis added). The Department also

provides that when products are items of general utility and serve substantially the same function as stock or standard items, the products will be subject to the ROT. Items which serve substantially the same function are those which, when produced on special order, could be sold as produced to someone other than the original purchaser at substantially the same price." ST 99-0345-GIL.

Finally, Illinois Regulation 86 Ill. Adm. Code 130.1995 provides some additional guidance, with respect to personalized tangible personal property, for determining the criteria for qualifying as "custom printed items." Personalized items subject to ROT are those "which bear the name, monogram or trade-mark of the purchaser or of some other person ... *have intrinsic usefulness and general utility and so have commercial value* (i.e., value to persons other than the purchaser), notwithstanding the fact that such items are personalized for the purchaser by the seller by printing, engraving or some other process by means of which the purchaser's name, monogram, trade-mark or special advertising matter is placed upon the article for the purchaser by the seller." 86 Ill. Adm. Code 130.1995(a)(1) (emphasis added). However, "[s]ellers of personalized business calling cards, greeting cards, letterheads, envelopes, labels, name plates, badges, medallions and the like do not incur [ROT] on their receipts from such sales because they *are primarily engaged in a service occupation* in producing or procuring such items, *which have no commercial value* for their customers." 86 Ill. Adm. Code 130.1995(a)(1) (emphasis added).

Based upon the preceding discussions of relevant authority, we have concluded that for AAA's purchases of NAME's to qualify as "custom printed items" and, therefore, for the printer of the NAME's to be considered engaged in a service occupation rather than a retail occupation with respect to the NAME's, several criteria must be satisfied. First, the NAME's must be "custom" or "specially ordered" as those terms are commonly understood. Second, the NAME's must not be standard enough to be stocked for sale or offered for sale from catalogues or other sales literature. Finally, the NAME's must not have an intrinsic usefulness or general utility such that the NAME's have commercial value to a purchaser other than AAA or, in other words, the NAME's could not be sold as produced to someone other than AAA at substantially the same price.

- a. AAA's NAME's are "custom" or "specially ordered" as those terms are commonly understood.

One common definition of "custom" is "made to order." American Heritage College Dictionary, 3rd Ed. Additionally, "custom-made" is commonly defined as "made according to the specifications of an individual purchaser." Id. AAA, when ordering NAME's, provides the printer of the NAME's with a 25 page specifications document that contains both the general industry specifications and the unique AAA requirements. AAA also provides the printer with the range of sequential stock control numbers, which are assigned to AAA, that are to be printed on the NAME's thereby making each individual NAME unique. AAA's airline ticket issuer number, which is unique to any airline's or other ticket issuer's number, is required to be preprinted on each NAME. AAA also requires that its NAME's have a specially-designed, copyrighted background for security/anti-fraud purposes. Other ticket issuers, such as individual airlines, use noticeably different background patterns and colors to prevent fraudulent duplication/use of its tickets. Finally, the location of various fields of information, which are later printed on each NAME by individual travel agents, and field names, which are preprinted by the printer on each NAME, except to the extent required by industry

uniformity standards, are unique to AAA's NAME. It is clear that AAA's NAME is made to order and according to the specifications of AAA, the purchaser, and are, therefore, "custom" or "specially ordered" as those terms are commonly understood.

- b. The NAME's are not standard enough to be stocked for sale or offered for sale from catalogues or other sales literature.*

The NAME's, printed to AAA's specifications, are not maintained by the printer in its general inventory and are not, and cannot be, offered for sale to the public generally. Because of the uniqueness of AAA's NAME's (as discussed in Section a. above) and the built-in security features, e.g., AAA's copyrighted background pattern, the security in assigning sequential stock control numbers, the presence of a pre-printed ticket issuer number, there are no customers for AAA's NAME's other than AAA. The attempted purchase of AAA's NAME's by anyone other than AAA, including AAA's members, would render the NAME's invalid and useless because the attempted use of a non-AAA issued NAME would be rejected by the universal travel reservation system. Also, the NAME's are not the type of items offered for sale by the printer via catalogues or other sales literature. According to Illinois Regulation 86 Ill. Adm. Code 130.2000(b)(1), illustrations of stock or standard items include such things as legal forms (e.g., wills, leases) and pictures. Such items could be used by different purchasers for the same or different purposes. No other purchaser could use the NAME's printed for AAA, not even the individual airlines which purchase ticket stock that is printed according to different specifications for the airlines own use for air travel sales made directly by airlines to the public. As discussed in the preceding section, each airline's ticket stock is distinct from that of AAA and any other airline. Different colors/shading is used, non-industry standard fields are located in different places on the ticket and each airline's anti-fraud/security features are different. Additionally, as noted above, AAA's anti-fraud/security pattern is copyrighted and, consequently, the NAME's printed for AAA could not legally be reproduced and sold to a third-party, in any event, without AAA's permission. Furthermore, each airline's ticket stock has the particular airline's issuer number and assigned sequential stock control numbers pre-printed on the ticket stock and such stock is, therefore, unusable by any other air travel seller. AAA's name and logo are also preprinted on each NAME further distinguishing AAA's NAME's from ticket stock issued by the individual airlines. Therefore, AAA's NAME's are not and could not be stocked for sale by the printer.

- c. The NAME's do not have an intrinsic usefulness or general utility such that the NAME's have commercial value to a purchaser other than AAA or, in other words, the NAME's could not be sold as produced to someone other than AAA at substantially the same price.*

The only utility or usefulness of an NAME is as evidence of the purchase of air travel, i.e., an airline ticket, and as a corresponding boarding pass. Although the level of customization involved in printing the NAME's goes beyond "personalizing," Illinois Regulation 86 Ill. Adm. Code 130.1995(a)(1) provides some examples of tangible personal property which has intrinsic usefulness and general utility and, therefore, have commercial value to persons other than the purchaser. The examples include thermometers, pencils, pens, watches, match books, calendars, which bear the name, monogram or trade-mark of the purchaser or some other person. Regardless of from whom these items are purchased or otherwise obtained, the general utility of the item itself remains notwithstanding the existence of someone's name, monogram or trade-

mark, e.g., the thermometer measures the temperature, the pen can be used to sign a document, the watch displays the time. An NAME's general utility/commercial value is as an airline ticket/boarding pass for a particular flight. An NAME becomes an airline Ticket/boarding pass for a particular flight only when it is validly issued. To be validly issued, AAA must issue/assign the NAME's (a particular range of stock control numbers) to its members/agents which, in turn, issue the NAME's to its customers upon the purchase of air travel. Therefore, AAA's NAME's are of no general utility/commercial value to other purchasers because they cannot validly serve as evidence of the purchase of air travel or as a boarding pass.

To the extent that the printing of AAA's NAME's can be analogized to personalizing tangible personal property, the printing of NAME's are similar to the printing of business cards and letterhead, which is considered a service occupation and not subject to ROT, because the only real commercial value in such items exists when it is issued by the person/entity whose name (or issuer number) appears on it. To any other person/entity, these items would have to be sold at a substantially reduced price, if not given away.

CONCLUSIONS

In summary, (1) AAA's NAME's are "custom" or "specially ordered" as those terms are commonly understood; (2) the NAME's are not standard enough to be stocked for sale or offered for sale from catalogues or other sales literature; and (3) the NAME's do not have an intrinsic usefulness or general utility such that the NAME's have commercial value to a purchaser other than AAA or, in other words, the NAME's could not be sold as produced to someone other than AAA at substantially the same price. Therefore, we have concluded that AAA's purchases of NAME's are purchases of custom printed material for Use Tax and Service Occupation Tax/Service Use Tax purposes and the printer of NAME's is engaged in a service occupation.

Please contact me if you have any questions, require additional information or for any reason, tentatively determine that you cannot issue the requested ruling.

Department's Response

The ticket stock referred to as NAME's are custom printed materials that are not considered to be stock or standard items and could not be sold to someone other than AAA for substantially the same price. Therefore, Service Occupation Tax applies. See 86 Ill. Adm. Code 130.2000 and 140.101.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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MAJ:msk
Enc.